



## ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

Age: 36 years	
DOB: 4/19/1975	
Cont. from 121211, 030512	
Aff.Sub.Wit.	
Verified	
Inventory	
PTC	
Not.Cred.	
Notice of Hrg	
Aff.Mail	
Aff.Pub.	
Sp.Ntc.	
Pers.Serv.	
Conf. Screen	
Letters	
Duties/Supp	
Objections	
Video Receipt	
CI Report	
9202	
Order	
Aff. Posting	
Status Rpt	
UCCJEA	
Citation	
FTB Notice	

**ROSEMARIE A. SWEARINGEN** and **MAILE MOORE** were appointed co-Conservators of the person and estate on 12/20/1993.

First account was due 12/20/1994.

**Court Investigator JoAnn Morris' Report filed on 8/30/11.**

**NEEDS/PROBLEMS/COMMENTS:**

Continued from 3/5/12. Minute order states the court sets an OSC. Appearance needed from Mr. Humpal in person or via Court Call.

On 4/17/12 Mr. Humpal substituted out as attorney of record for Rosemarie Swearingen.

1. Need current status report or first account.

Reviewed by: KT

Reviewed on: 4/20/12

Updates:

Recommendation:

File 1 - Moore

Atty

Markeson, Thomas A., of Wild Carter &amp; Tipton (for Petitioner Maria Kapssof)

(1) Petition for Settlement of Second and Final Account and (2) Final Report of Administration and (3) Petition for Payment Statutory and Extraordinary Executor and Attorney Fees and (4) for Reimbursement of Costs Advanced by Attorneys (Probate Code 9202, 10800, 10810, 10950, 11600 and 11640)

<b>DOD: 8/25/2007</b>		<b>MARIA KAPSSOF</b> , daughter and Executor, is Petitioner.	<b>NEEDS/PROBLEMS/COMMENTS:</b>
		Account period: 7/1/2009 – 2/1/2012	
		Accounting - <b>\$322,603.72</b>	
<b>Cont. from</b>		Beginning POH - <b>\$313,645.79</b>	
	Aff.Sub.Wit.	Ending POH - <b>\$174,684.86</b> (\$169,484.86 is cash)	
✓	Verified		
✓	Inventory	Executor - <b>\$6,924.81</b>	
	PTC	(Note: no statutory fees were paid at the time of the First Account; Petitioner reserved at that time the right to request fees at a later date;)	
✓	Not.Cred.		
✓	Notice of Hrg		
✓	Aff.Mail	w/	
	Aff.Pub.	Executor XO - <b>\$1,520.00</b> (per Local Rule 7.18; \$520.00 for sale of vehicle, and \$1,000.00 for sale of residence via Court confirmation on 12/16/2011;)	
	Sp.Ntc.		
	Pers.Serv.		
	Conf. Screen	Attorney - <b>\$6,924.81</b>	
	Letters	052708 (Note: no statutory fees were paid at the time of the First Account; attorney reserved at that time the right to request fees at a later date;)	
	Duties/Supp		
	Objections		
	Video Receipt	Attorney XO - <b>\$13,000.00</b> (per declaration and itemization; for 61.3 hours @ \$205.00/hr and \$225/hr attorney rates; attorney discounts from \$13,390.50;)	
	CI Report		
✓	9202		
✓	Order	Costs - <b>\$1,653.00</b> (filing fees, CourtCall fees, probate referee, publication;)	
	Aff. Posting		
	Status Rpt	Closing reserve - <b>\$1,200.00</b>	
	UCCJEA		
	Citation		
	FTB Notice	N/A	

~Please see additional page~

<b>Reviewed by:</b> LEG
<b>Reviewed on:</b> 4/20/12
<b>Updates:</b>
<b>Recommendation:</b>
<b>File 2 - Ledaiev</b>

**Distribution pursuant to Decedent's Will and *Assignment of Interest* is to:**

- MARIA KAPSSOF – **\$17,968.54 cash**
- PETER A. LEDIAEV (DOD 1/1/2010) – **\$17,968.54 cash** *(to be held by Petitioner pending receipt of documents from beneficiaries of his estate;)*
- MARTHA KALPAKOFF – **\$17,968.54 cash**
- ALEX LEDIAEV – **\$17,968.54 cash**
- KATHY LEDIAEV (DOD 6/27/2008) – **\$17,968.54 cash** *(to be held by Petitioner pending receipt of documents from beneficiaries of her estate;)*
- TANYA LEDIAEV (SCOTT) – **\$12,482.43** *(\$17,968.54 less the advance of \$5,486.11 per Assignment of Interest filed 6/5/2009);*
- ANNA LEDIAEV (KOCHERGEN) – **\$17,968.54 cash**
- LISA BISCHER – **\$5,989.51**
- CHRISTINA KOCHERGAN-GOMEZ – **\$5,989.51**
- STEVEN KOCHERGAN – **\$5,989.51**

Atty Kruthers, Heather H (for Public Guardian current Trustee)

Atty Durost, Linda K. (for Phillip Hudson and Debra Hudson former Trustees)

Status Hearing Re: Filing Accounting From Former Co-Trustees

		<p><b>PHILLIP HUDSON and DEBRA HUDSON</b> were acting Successor Co-Trustees of the <b>HUDSON TESTAMENTARY TRUST dated 11/17/1986</b> as of 10/19/2004.</p> <p><b>PALM VILLAGE RETIREMENT COMMUNITY</b> had petitioned for the <b>PUBLIC GUARDIAN</b> to be appointed as Conservator of the Person and Estate of <b>MARJORIE C. HUDSON</b>, Trust beneficiary who resided in that facility, in Case No. 09CEPR01011. <i>Minute Order dated 2/9/2010</i> which appoints the Public Guardian as Conservator states: "All powers of attorney and any other powers to act as trustee are revoked forthwith.... Nobody other than the Public Guardian is to do anything with any assets of any form."</p> <p><b>PUBLIC GUARDIAN</b> filed on <b>2/17/2011</b> a petition for appointment as successor trustee of the Hudson Testamentary Trust. <i>Order Appointing Public Guardian as Successor Trustee and Compelling Former Co-Trustees to Account signed on 4/5/2011</i> finds that Phillip Hudson and Debra Hudson are ordered to account to this Court and the Public Guardian for all Trust activity from the date of their appointment, but no later than from 10/19/2004, and the accounting is to be filed by <u>7/12/2011</u>.</p> <p><i>Minute Order dated 7/12/2011</i> from the hearing set for the accounting from the former Co-Trustees states Counsel [Heather Kruthers] advises the Court that Ms. Hudson contacted her and informed her that she needed more time to prepare the accounting. The Court continued the matter to 9/20/2011.</p> <p><i>Minute Order dated 9/20/2011</i> from the continued status hearing for the former Co-Trustees' accounting states Ms. Kruthers advises the Court that the Public Guardian has had no communication with Debra Hudson and Phillip Hudson. The Court set the matter for an Order to Show Cause on 11/1/2011. The Court ordered Debra Hudson and Phillip Hudson to be present on 11/1/2011 with or without an accounting. The Court further ordered that Debra Hudson and Phillip Hudson turn over all documents related to the Trust to the Public Guardian.</p> <p><i>Minute Order dated 11/1/11</i> states Counsel requested a 60 day continuance. The matter was continued to 1/31/12.</p> <p><i>Minute Order dated 1/31/12</i> states Attorney Durost requests a 90 day continuance. Ms. Durost needs to subpoena medical records.</p>	<p><b>NEEDS/PROBLEMS/ COMMENTS:</b></p> <p>1. Need accounting from former Co-Trustees, Phillip Hudson and Debra Hudson, per Court order dated 4/5/2011.</p>
<b>Cont. from 013112</b>			
Aff.Sub.Wit.			
Verified			
Inventory			
PTC			
Not.Cred.			
Notice of Hrg			
Aff.Mail			
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
Letters			
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order			
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			

Reviewed by: KT
Reviewed on: 4/20/12
Updates:
Recommendation:
File 6 - Hudson

Atty Keeler, Jr., William J., of Garvey Schubert & Barer, Portland, Or (for Petitioner Dennis L. Thomas, Successor Co-Trustee)

Atty Ivy, Scott J., of Lang Richert & Patch (for Respondent and Contestant Janette Courtney, Executor)

Petition to Determine Validity of Trust Instruments; to Determine Title to Property; to Recover Trust Property; to Compel Trustee to Account and Report; Financial Elder Abuse (Prob. C. 17200, 850; W & I C 15657.5)

Ernest DOD: 2003		DENNIS L. THOMAS, son, Beneficiary, and Successor Co-Trustee, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
Loretta DOD: 6/9/2011			
		Petitioner states:	Continued from 2/7/2012. Minute Order states Mr. Ivy requests a continuance; Court continued the matter and set this status conference.
Cont. from 020712		<ul style="list-style-type: none"> <li>Ernest and Loretta Drummond were married and had no children together, but had seven children total from prior marriages: <ul style="list-style-type: none"> <li>Ernest's children: <b>SANDRA THOMPSON, JOANN DAWSON</b> and <b>[ERNEST] MICHAEL DRUMMOND, JR;</b></li> <li>Loretta's children: <b>STEVEN THOMAS, DAVID THOMAS, DENNIS L. THOMAS</b> (Petitioner), and <b>JANETTE BURCH COURTNEY;</b></li> </ul> </li> <li>Ernest and Loretta founded a successful hearing aid company called the <b>DRUMMOND COMPANY</b> (Drummond Co.);</li> <li>On 4/23/1992, Ernest and Loretta created the <b>ERNEST L. DRUMMOND FAMILY TRUST</b> ("Ernest Trust") (copy attached as Exhibit A); Schedule A to the Ernest Trust identifies and places into the Trust 2 parcels of real property, 2 bank accounts, 2 vehicles, 2 life insurance policies, an IRA, and 100% of the 30,000 shares of the Drummond Co. as property of the Ernest Trust; many of those assets, however, remained in joint tenancy between Ernest and Loretta until Ernest's death, including the Drummond Co. shares;</li> <li>On 4/30/2003, Ernest and Loretta amended the Ernest Trust (copy of First Amendment attached as Exhibit B), in which both Ernest and Loretta agreed to make specific trust distributions of a 40-acre ranch and a liquor store in Mariposa to <b>STEVEN THOMAS</b>, son, and to provide all of Loretta's and Ernest's shares in the Drummond Co. to Dennis Thomas (Petitioner) free of trust upon the death of the survivor of Loretta and Ernest;</li> </ul>	<p><i>Note: Order Granting Ex Parte Application for Temporary Restraining Order was signed on 11/29/2011 ordering that Janette Courtney, Executor [appointed with full IAEA without bond on 9/15/2011], is restrained from transferring, selling, encumbering, leasing or granting any other interest in the real property located in Visalia to Tad Edwards or his assignee, or otherwise committing the acts described in the Notice of Proposed Action dated 10/25/2011 absent the supervision and order of this Court.</i></p> <p>1. Need proposed order.</p>
Aff.Sub.Wit.			
✓ Verified		<p>~Please see additional page~</p>	<p>Reviewed by: LEG</p> <p>Reviewed on: 4/20/12</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 8 - Drummond</p>
Inventory			
PTC			
Not.Cred.			
✓ Notice of Hrg			
✓ Aff.Mail	W/		
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
Letters	091511		
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order	X		
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			

Petitioner states, continued:

- Upon Ernest's death in 2003, the **Ernest Trust** was divided into 2 sub-trusts, the Marital Trust ("**Survivor's Trust**") and Family Trust ("**Decedent's Trust**"); pursuant to the terms of the **Ernest Trust**, 50% of the shares of the Drummond Co. were held in Decedent's **Trust** after Ernest's death;
- Pursuant to the **Ernest Trust**, Petitioner is currently the acting Trustee of both the Survivor's **Trust** and Decedent's **Trust**, with the principal place of administration of both trusts being in Fresno County;
- On 8/11/2005, Loretta created the **LORETTA M. DRUMMOND "S TRUST"** ("**S Trust**") (*copy attached as Exhibit C*); *Schedule A* to the **S Trust** identifies 27,000 shares of the Drummond Co. as property of the **S Trust**, and the terms of this trust permit the subsequent addition of property to the trust;
- At the time of the **S Trust** creation, Loretta and Janette (Respondent) knew and/or through the exercise of reasonable care should have known that up to ½ of the 27,000 shares of the Drummond Co. stock were assets of the irrevocable **Decedent's Trust**;
- On 3/1/2007, Loretta amended the distribution scheme of the **S Trust** to provide for equal shares of the trust estate to be distributed to all seven of the Drummond children (*copy of First Amendment to the S Trust attached as Exhibit D*); *[Examiner's Note: While ¶ 11 of the Petition states the amendment to the S Trust provided for equal shares of the trust estate to be distributed to "all seven" children, it appears from the copy of the First Amendment to the S Trust that distribution of the trust property was to be made to Janette Burch, David A. Thomas, Joann E. Dawson and Sandra L. Thompson only.]*
- Pursuant to the **S Trust**, Janette Burch Courtney is the acting trustee of the **S Trust**, and the principal place of its administration is **Cincinnati, OH**;
- During Ernest's life, Petitioner worked at the Drummond Co. and while doing so acquired a **10% interest** in the company from Ernest and Loretta with the understanding and promise that he would inherit control of the Drummond Co. upon Ernest's death; Petitioner believed he would receive the additional shares of the Drummond Co. necessary for control from a trust established by Ernest;
- Upon Ernest's death, Petitioner was informed by Janette that Ernest had never established the trust he expected and she stated Ernest had attempted to establish a trust but that the trust did not actually exist because it had never been funded;
- Despite repeated requests to both Loretta and Ernest, Petitioner was unable to obtain a copy of the **Ernest Trust** from Janette until after Loretta's death;
- Although Petitioner believed that Ernest and Loretta had intended to leave the Drummond Co. to him upon Ernest's death, Janette indicated that because the shares in the Drummond Co. were held in joint tenancy between Ernest and Loretta, Loretta had become the owner of **90%** of the shares of the Drummond Co. through right of survivorship and was free to place those share into the **S Trust**;
- Janette, as Trustee of the **S Trust**, called a meeting of the shareholders of the Drummond Co. and by voting the shares of the Drummond Co. held in the **S Trust** and by acting as a majority shareholder, Janette removed Petitioner as an officer of the Drummond Co. and installed herself as president of the company;
- Petitioner subsequently left the employ of the Drummond Co., and after his departure, Janette offered to buy Petitioner's **10%** interest in the Drummond Co., demanding that Petitioner waive any interest in the Drummond Co. under both Ernest's and Loretta's estate plans, claiming that such waiver was necessary because there was a possibility she would sell the company and potential buyers might offer a lower price if they believed a conflicting claim to the company existed; in order to ensure Petitioner accepted her offer, Janette also raised a number of potential claims that the Drummond Co. could have against Petitioner and his wife, **MELANIE THOMAS**, at the time related to their tenures as employees of the Drummond Co.;
- A *Settlement Agreement Regarding Disputed Legal Matters* (*attached as Exhibit E*) was entered into by Petitioner, his wife, Janette, Loretta, the Drummond Co. and **SAUNDRA SOUSA**, Loretta's sister and the person who had actually been operating the Drummond Co. during Janette's tenure as president; the *Settlement Agreement* pertained to the various claims held or potentially held by the parties;
- Petitioner believes that as part of the settlement contemplated by that agreement, Petitioner and Janette also executed a stock purchase agreement that transferred Petitioner's **10%** interest in the Drummond Co. to Janette as Trustee of the **S Trust**; in the stock purchase agreement, Janette warranted that "Buyer has full power and right to enter into this Agreement and to purchase Seller's interest in the company;" Loretta signed the agreement as the owner of the Drummond Co. (*copy of stock purchase agreement attached as Exhibit F*);

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**Petitioner states, continued:**

- In June 2011, Petitioner was finally able to obtain copies of the **Ernest Trust** and its *First Amendment*; Petitioner was unaware until that time that the claims set forth in the *Petition* existed or were legally supported;
- After reviewing the **Ernest Trust** and its *First Amendment*, Petitioner first learned that upon the death of Ernest, Petitioner should have become a vested remainder beneficiary in a majority of the shares of the Drummond Co. despite Janette's statements and Loretta's actions to the contrary;
- Petitioner will file contemporaneously with this petition a complaint for damages and rescission in Fresno County Superior Court on the basis of these same facts. [Note: Civil case filed 12/29/2011 in Case #11CECG04320; first amended complaint filed 1/25/2012.]

**Petition requests the Court determine the validity of the Ernest Trust on the following additional bases:**

- Petitioner believes Ernest and Loretta executed the **Ernest Trust** and its *First Amendment* so as to ensure that all of their shares in the Drummond Co. distributed to Petitioner upon the death of the survivor of the two;
- Petitioner further believes that despite the fact that the shares were held in joint tenancy between Ernest and Loretta until Ernest's death, the declaration contained in the **Ernest Trust** that Ernest and Loretta "hereby transfer and deliver to the Trustees and their successors the property listed in Schedule A" was sufficient to fund the **Ernest Trust** pursuant to Heggstad because **100%** of the Trustors' shares of the Drummond Co. were listed in *Schedule A*;
- Petitioner asserts that the **Ernest Trust** and the *First Amendment* thereto are valid, binding, and enforceable trust instruments.

**Petition requests the Court determine the [in]validity of the S Trust on the following additional bases:**

- Petitioner believes the **S Trust** was executed in August 2005, after Ernest's death;
- **Improper funding:** Petitioner believes that due to the operation of the **Ernest Trust** and its *First Amendment*, Loretta did not have possession of or legal title to the 27,000 shares listed in *Schedule A* of the **S Trust**;
  - Petitioner believes that due to the operation of the **Ernest Trust** and its *First Amendment*, 100% of the shares of the Drummond Co. were set aside to be distributed to Petitioner free of trust upon the death of Loretta;
  - Ernest had often told Petitioner and his siblings, including Janette, that Petitioner would receive control of the Drummond Co. upon his death;
  - Because Loretta did not have possession of or legal title to the 27,000 shares listed in *Schedule A* to the **S Trust**, the **S Trust** and/or Janette as Trustee of the **S Trust** never acquired possession of or legal title to any of the Drummond Co. shares owned by the **Ernest Trust**; because the **S Trust** was never funded with shares in the Drummond Co., the **S Trust** is invalid insofar as it purports to control the distribution of any shares in the Drummond Co.;
- **Undue Influence:** Petitioner believes that the entirety of the **S Trust** is invalid because Loretta executed the **S Trust** as a result of undue influence on the part of Janette;
  - Petitioner believes that Janette and Loretta were in a confidential relationship because they were mother and daughter, because Janette principally handled her mother's affairs, and because Janette had a durable power of attorney over Loretta at that time;
  - Petitioner believes that Loretta was susceptible to undue influence because she suffered from acute alcoholism and was frequently intoxicated or suffering from the effects of alcohol withdrawal;
  - Petitioner believes Janette was active in the procuring of the **S Trust** because Janette was principally in charge of Loretta's affairs, and because, due to Loretta's intoxication or other illness, Loretta could not have driven herself to an attorney's office, secured her own transportation, or otherwise interacted with an attorney without Janette's assistance;
  - Petitioner believes Janette unduly benefitted under the terms of the **S Trust** because the **S Trust** allowed for Janette to vote Petitioner off of the board of the Drummond Co. and to install herself as president of the company, reaping the benefits of that position; in addition, had the **S Trust** never been executed, the shares of the Drummond Co. would have been distributed to Petitioner pursuant to the intent of both Loretta and Ernest.

~Please see additional page~



**Petition for Relief under Probate Code § 850 Against Janette Burch Courtney as Trustee of the S Trust:**

- Petitioner believes that Janette is in possession of either shares of the Drummond Co., proceeds from the sale of shares of the Drummond Co., or some combination thereof;
- Petitioner believes that those shares or the proceeds from the sale thereof are properly the property of the **Ernest Trust** and/or Petitioner acting as Trustee of the **Ernest Trust**;
- Petitioner seeks an order of the Court that Janette Burch Courtney transfer to Petitioner or otherwise hold in constructive trust for Petitioner any shares of the Drummond Co. and/or any funds derived from the sale of any and all funds and assets Janette has wrongfully removed from the Drummond Co.

**Petition to Compel Trustee to Account and Report Against Janette Burch Courtney as Trustee of the S Trust:**

- Petitioner alleges there is sufficient basis to compel Janette to render a complete account and report of her administration of the **S Trust** for the period of 8/11/2005 to the present, including the activities of the Drummond Co.;
- Petitioner requests the Court order Janette to include in her account and report her administration of any shares in the Drummond Co.

**Petition for Financial Elder Abuse Against Janette Burch Courtney, individually and as Trustee of the S Trust:**

- At all times relevant to this action, Loretta was aged 65 or older;
- Loretta created the **S Trust** with Janette's assistance and at Janette's direction; absent Janette's conduct, Loretta would not have so acted;
- Petitioner alleges that through Janette's assistance and by Janette's direction, 27,000 shares in the Drummond Co. were effectively put at Janette's disposal; Janette knew or should have known that her assistance in taking, secreting, misappropriating, obtaining, and/or retention of Loretta's property was likely to be harmful to Loretta, and that, by depriving Loretta of her shares, her conduct did in fact cause Loretta harm;
- Petitioner alleges that Janette's conduct constituted financial abuse under Welfare & Institutions Code § 15657.5 as defined in Welfare & Institutions Code § 15610.30.

**Petitioner prays for an Order from the Court finding that:**

1. The **Ernest Trust** is a valid and enforceable declaration of trust;
2. The *First Amendment* to the **Ernest Trust** is a valid and enforceable amendment to the **Ernest Trust**;
3. Any provision of the **S Trust** that relates to or that purports to control the distribution of any shares of the Drummond Co. is invalid;
4. The entirety of the **S Trust** is invalid due to undue influence;
5. That Janette Burch Courtney, as Trustee of the **S Trust**, holds any shares of the Drummond Co. or any proceeds from the sale thereof in constructive trust for the benefit of Petitioner Dennis L. Thomas;
6. That Janette Burch Courtney, as Trustee of the **S Trust**, is ordered to immediately transfer any shares of the Drummond Co. or any proceeds from the sale thereof to Petitioner Dennis L. Thomas;
7. That Janette Burch Courtney, as Trustee of the **S Trust**, is ordered to file and serve a complete account and report of her administration of the **S Trust** for the period of 8/11/2005 to the present and return all funds and assets taken from the Trust and/or the Drummond Co.;
8. That Petitioner is awarded general damages in an amount according to proof;
9. That Petitioner is awarded special damages in an amount according to proof;
10. That Petitioner is awarded punitive damages in an amount sufficient to punish and deter similar conduct; and
11. That Petitioner is awarded costs and reasonable attorneys' fees.

*~Please see additional page~*

***Response to Petition to Determine Validity of Trust Instruments; to Determine Title to Property; to Recover Trust Property; to Compel Trustee to Account and Report; for Financial Elder Abuse; and Request for Abatement per Probate Code § 854 filed on 1/30/2012 by Contestant Janette Courtney, in her individual capacity, and in her capacity as Executor, and as Trustee of the Loretta M. Drummond "S" Trust, states:***

- The *Petition* asserts various and serious allegations against her, most of which, if not all, are based upon allegations asserted on "information and belief" that are not sufficient evidence to support the relief granted in the *Petition*;
- Moreover, the *Petition* admits that Petitioner has also filed a civil action in Fresno County Superior Court (Case No. 11CECG04320) "on the basis of these same facts" as alleged in the *Petition*;
- Contestant cites the following: Pursuant to Probate Code § 854, the Probate Court, "upon request of any party to the civil action **shall abate the petition** until the conclusion of the civil action." Pursuant to Probate Code § 856.5, the Court "may not grant a petition under this chapter if the court determines the matter should be determined by a civil action." Pursuant to Probate Code § 852, any interested party may request a continuance to conduct discovery proceedings, or for other preparation for the hearing.
- The nature and complexity of the allegations set forth in the *Petition*, and the fact that almost all of the allegations are based upon "information and belief" not sufficient to support the granting of the *Petition* in any event, make it clear that these factual issues will be the subject of [extensive] and time-consuming discovery in the pending civil action;
- **Accordingly, Contestant requests that the Court deny the *Petition* pursuant to Probate Code § 856.5;**
- Given that the *Petition* admits Petitioner is seeking relief "on the basis of the same facts" as those alleged in the pending civil action, **Contestant requests that this Court abate this action and this *Petition* until the conclusion of the civil action pursuant to Probate Code § 854;**
- If the Court declines to abate or deny the *Petition* as requested above, **Contestant requests that the Court continue the hearing on the *Petition* for a minimum of 180 days pursuant to Probate Code § 852 to allow Contestant to conduct sufficient discovery to defend against the numerous and very serious claims that are currently all asserted simply upon "information and [belief]."**

**Contestant requests:**

1. The Court deny the *Petition* pursuant to Probate Code § 856.[5] on the grounds that the matter should be determined in the currently pending civil action;
2. Alternatively, and only if the Court declines to dismiss the *Petition* pursuant to Probate Code § 856.5, the Court issue an order pursuant to Probate Code § 854 abating the *Petition* until the conclusion of the civil court action;
3. Alternatively, and only if the Court declines to dismiss and/or stay the *Petition* pursuant to Probate Code §§ 856.[5] and 854 as prayed, the hearing on the *Petition* be **continued for a minimum of 180 days** [pursuant to Probate Code § 852] to allow Contestant to conduct discovery and otherwise prepare for the hearing.